

Recommendation 11: Support for Changes to Guardianship Laws

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The Study Commission on Aging supports the seven remaining recommendations that have not yet been enacted from the report of the House Study Committee on State Guardianship Laws to the 2007 North Carolina House of Representatives.

Background 11: Support for Changes to Guardianship Laws

The House Study Committee on State Guardianship Laws met seven times between August 22, 2006 and November 16, 2006. The Committee made nine recommendations to the 2007 House of Representatives. On January 3, 2007, the Study Commission on Aging heard a presentation on the recommendations from the House Study Committee on State Guardianship Laws. The Study Commission on Aging's report to the 2007 Session of the General Assembly contained the following recommendation: "The Study Commission on Aging supports the recommendations of the House Study Committee on State Guardianship Laws."

The Study Commission on Aging's report to the 2008 Session of the General Assembly contained the following recommendation: "The Study Commission on Aging recommends that the General Assembly enact legislation to authorize the Division of Motor Vehicles to consider recommendations from the clerk of court in determining drivers license revocation of an incompetent individual, and to raise the ceiling on the amount of personal property a guardian is allowed to sell without court order, which are both based on recommendations from the House Study Committee on State Guardianship Laws to the 2007 General Assembly." The Study Commission on Aging's recommendation represented recommendations 6 and 7 from the House Study Committee on State Guardianship. Laws on both of these issues were enacted during the 2008 Session.

The remaining seven recommendations from the House Study Committee on State Guardianship Laws have not been enacted:

Recommendation 1. The Committee recommends that the terminology used in the statutes should be changed from "incompetent adult" to "incapacitated person" and the definition should of be amended to base the determination of incompetence or incapacity on the person's functional abilities. This would allow guardianships to be tailored to the individual's needs and facilitate the use of limited guardianships where appropriate.

Recommendation 2. The Committee recommends that the statutes be amended to add more detailed provisions setting out the powers, duties, and liabilities of guardians of the person.

Recommendation 3. The Committee recommends that the General Assembly appropriate funds to cover guardianship services provided by county departments of social services, Local Management Entities (LMEs), local health departments, and county departments on aging, and to cover essential legal and medical consultation.

Recommendation 4. The Committee recommends that independent counsel be provided to represent the respondent when there is a conflict between what the respondent wants and what the guardian ad litem feels is in the respondent's best interest.

Recommendation 5. The Committee recommends that clerks of superior court be granted the authority to order law enforcement officers to transport alleged incompetents to necessary locations where the multi-disciplinary evaluation (MDE) will be performed if the alleged incompetent refuses to attend on their own.

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Recommendation 8. The Committee recommends that training be provided to all individuals involved in guardianship, including the guardians *ad litem* of alleged incompetents.

Recommendation 9. The Committee recommends the creation of a joint legislative study commission on State guardianship laws comprised of both members and appointees of the House of Representatives and the Senate.